



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re
Maren L. Carmona
Debtor.

Case No. LA 05-22992 TD

Chapter 7

MEMORANDUM OF DECISION

The following are my findings of fact and conclusions of law in response to the motion of the Chapter 7 Trustee for reconsideration (Motion) of my order entered November 14, 2005, dismissing this bankruptcy case on the Debtor's motion while denying fees and costs sought by the Trustee and her attorneys.

INTRODUCTION

The Debtor, is a widow, her husband having passed away in 2002. The Debtor and her deceased husband have a 14-year old daughter. Prior to his death, the Debtor's husband conveyed his interest in the family residence in trust to their daughter. The trust is not subject to the Debtor's control. The Debtor and her daughter live in the family residence, worth, it is estimated, somewhere between \$400,000 and \$530,000, subject to a 2004 mortgage with a \$93,787 balance.

1 On March 24, 2005, the Debtor was diagnosed with stage IV colon cancer, with
2 liver metastasis. Her illness precipitated her chapter 7 bankruptcy petition filed on
3 June 3, 2005 (coincidentally, with the help of an attorney who charged only \$100 for
4 his services). In her bankruptcy papers, the Debtor said that: (1) she owned a 50%
5 undivided interest in the family residence as a tenant in common; (2) she valued her
6 interest at \$200,000; (3) she claimed a \$150,000 homestead exemption; (4) she owed
7 World Savings \$93,787 on the 2004 mortgage; (5) she had no co-debtors; and (6) her
8 gross income was \$1,743 per month, consisting of pension and disability payments.

9 Within about three months of her bankruptcy filing, the Debtor's sister paid all
10 prepetition unsecured creditors in full, about \$28,000, and the Trustee was given
11 notice of that fact on September 9, 2005, when the Debtor served her motion to
12 dismiss this case.

13 Meanwhile, on August 3, 2005, the Trustee had filed and served her application
14 to employ counsel, primarily to assist the Trustee to sell the Debtor's family residence,
15 including the interest of the Debtor's daughter, in order to pay creditors. The Debtor
16 did not oppose the employment application or ask for a hearing, and I approved the
17 Trustee's application by an order entered September 7, 2005.

18 At the time of the hearing on the Debtor's motion to dismiss her bankruptcy
19 case, the Trustee did not challenge any statement in the Debtor's bankruptcy papers
20 or in her motion to dismiss except the Debtor's \$200,000 valuation of her interest in
21 the family residence, but the Trustee sought payment of her fees and the fees of her
22 counsel as a condition to dismissal of the case.

23 The Trustee had engaged her lawyers' services informally on July 8 to assist
24 with the sale of the Debtor's residence. The Trustee's counsel went to work
25 immediately, four weeks before an employment application was served and filed.
26 Among other things, the attorneys prepared, filed, and served the Trustee's adversary

1 complaint against the Debtor and her daughter's trust before serving and filing the
2 Trustee's application to employ counsel. Total fees and costs sought by the Trustee
3 were \$1,820 for her services and \$6,075.12 for the fees and costs of her counsel.

4 I granted the Debtor's motion to dismiss but denied payment of fees and costs
5 to the Trustee and her counsel because I concluded from the record that the Debtor's
6 residence should not have been administered. I also concluded that the Trustee's
7 request for fees and costs for herself and for her counsel was unreasonable under the
8 circumstances based on my assessment of the evidence and the law. The Trustee
9 moved timely for reconsideration of my order. The Trustee urges that there was
10 sufficient equity in the Debtor's family residence to justify the Trustee's administration
11 and, thus, that the fees and costs incurred were proper and should be paid.

12 **DISCUSSION**

13 **When Should Reasonable Compensation and Expenses Be Awarded?**

14 The Trustee is entitled to reasonable compensation for her services limited by
15 § 326(a) of the Bankruptcy Code¹ to a percentage of "moneys disbursed . . . by the
16 trustee to parties in interest" Section 330(a)(1) accords me the discretion to
17 award "reasonable compensation for actual, necessary services . . . and
18 reimbursement for actual, necessary expenses" to a trustee or a professional she or
19 he may employ under § 327. In determining reasonable compensation, § 330(a)(3)(C)
20 says that I should take into account, "whether the services were necessary to the
21 administration of, or beneficial at the time at which the service was rendered towards
22 the completion of, a case under this title" On the other hand, § 330(a)(4) states
23 that ". . . the court shall not allow compensation for . . . (ii) services that were not-- (I)
24 reasonably likely to benefit the debtor's estate; or (II) necessary to the administration

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26 ¹ All section references herein are to the Bankruptcy Code, 11 U.S.C. §§ 101 to 1330, unless
otherwise specifically noted.

1 of the case.” The Bankruptcy Appellate Panel for the Ninth Circuit has interpreted this
2 to require only that the services were “reasonably likely” to benefit the estate at the
3 time the services were rendered but does not require proof of an actual material
4 benefit to the estate from the services rendered. In re Mednet, 251 B.R. 103, 108 (9th
5 Cir. BAP 2000). However, the Panel pointed out that a professional must exercise
6 reasonable billing judgment and that after a cost benefit analysis when it is determined
7 that the only parties who likely would benefit are the trustee and his or her
8 professionals, “the service is unwarranted and a court does not abuse its discretion in
9 denying fees for those services.” Id. at 108-09 (quoting In re Riverside-Linden
10 Investment Co., 925 F.2d 320, 321 (9th Cir. 1991)).

11 **What does a cost benefit analysis show here?**

12 In my judgment, the question presented here is whether the Trustee and her
13 attorneys exercised reasonable billing judgment when considering whether to incur
14 expenses for services in either selling the Debtor’s family residence or resisting the
15 Debtor’s efforts to have her bankruptcy case dismissed under the particular
16 circumstances of this case, including the following facts established by the evidence:
17 (1) the Debtor’s prepetition debts had been paid just three months into the case and
18 almost simultaneously with the Trustee’s employment of counsel; (2) overall, the
19 Debtor and her daughter, by the Trustee’s estimate, had a pre-sale paper equity in
20 their home of at least \$435,000 based on the Trustee’s estimate of value, subject to a
21 relatively modest mortgage; (3) the Debtor was solely liable for the mortgage; and (4)
22 the Debtor apparently was keeping up with her obligations on the mortgage since my
23 review of the case docket reflects the fact that no relief from stay motion was filed by
24 her lender.

25 The Trustee set her sights on a sale of the residence apparently based on a
26 broker’s informal \$530,000 valuation of the residence and pursuant to § 363(h).

1 Section 363(h) accords a trustee the right to sell an “estate’s interest” in property along
2 with “the interest of any co-owner.” At the same time, § 364(h) also explicitly allows
3 the trustee to sell “**only if** . . . the benefit to the estate of a sale free of the interests of
4 co-owners outweighs the detriment, if any, to such co-owners” (Emphasis
5 added.) Here, it seems to me that the detriment to the Debtor’s 14-year old co-owner
6 was both substantial and obvious from the record at the time the Debtor served her
7 motion to dismiss the case on the Trustee. That detriment clearly outweighed any
8 benefit that the estate might have realized by the forced sale of the Debtor’s home. In
9 fact, in this case, the evidence demonstrates that the only entities who might benefit
10 from the sale were the Trustee, her lawyers, and her real estate broker.

11 The Trustee, in her Motion, takes a narrow, technical but straightforward view of
12 the situation. In addition to Bankruptcy Code § 363(h), she cites California Code of
13 Civil Procedure (CCP) § 873.820 as a further statutory basis to support her position.
14 Section 873.820 states:

15 The proceeds of sale for any property sold shall be applied in the following
16 order:

17 (a) Payment of the expenses of sale.

18 (b) Payment of the other costs of partition in whole or in part or to secure
any cost of partition later allowed.

19 (c) Payment of any liens on the property in their order of priority except
20 liens which under the terms of sale are to remain on the property.

21 (d) Distribution of the residue among the parties in proportion to their
shares as determined by the court.

22 CCP § 873.820.

23 In discussing distribution of sale proceeds in a Bankruptcy Code § 522(f)
24 context, the Ninth Circuit BAP has recognized that CCP § 873.820 applies “once a
25 residence has been sold pursuant to partition . . . [to provide] . . . a defined order of
26 distribution of sale proceeds.” In re Nielsen, 197 B.R. 665, 671 (9th Cir. BAP 1996).

1 At first blush, the Nielsen decision might seem to support the Trustee's Motion.
2 However, there are factors to consider here that were not addressed in Nielsen. For
3 example, in the case now before me, (1) there has been no sale; (2) we have
4 conflicting estimates of value; (3) the Trustee' argument omits mention of other
5 applicable California statutes; and, finally, (4) we must remember that we are not
6 concerned here with what to do with the proceeds after a sale but, rather, with the
7 question of whether the Trustee exercised reasonable billing judgment as required by
8 Mednet, 251 B.R. at 108-09, or whether the Trustee overlooked § 330(a)(4) when she
9 elected to incur legal charges as early as she did and to resist the Debtor's motion to
10 dismiss her bankruptcy case.

11 In examining the reasonableness of the Trustee's billing judgment, I believe
12 there were important factors here that the Trustee should have given more weight to.
13 For example, (1) the Debtor's prepetition unsecured creditors had been paid in full; (2)
14 the Debtor's family situation was critical and unusual; (3) the Debtor's financial and
15 medical circumstances were complicated by her lack of financial liquidity or options;
16 and (4) the Debtor and daughter had a very sizable equity in the home (regardless of
17 conflicting estimates of value).

18 Perhaps even more importantly, Title 10.5 of the California Code of Civil
19 Procedure (where CCP § 873.820 is found) is lengthy and includes several provisions
20 in addition to CCP § 873.820 that I believe may be relevant here and that deserve
21 consideration. Other statutes that I believe the Trustee should have considered
22 include CCP §§ 872.140 and 873.250(a). For example, § 872.140 provides: "The
23 court may, in all cases, order allowance, accounting, contribution, or other
24 compensatory adjustment among the parties [that is, between the Debtor's bankruptcy
25 estate and the Debtor's co-tenant, her minor daughter's trust] according to the
26 principles of equity." Section 873.250(a) provides: "Where division [of property] cannot

1 be made equally among the parties according to their interests without prejudice to the
2 rights of some, compensation may be required to be made by one party to another to
3 correct the inequality.” I believe that CCP §§ 872.140 and 873.250(a), as well as CCP
4 §§ 873.820(b) and (d), may be integral to the issue of partition of the Debtor’s family
5 residence and applicable to my decision in this matter.

6 **The Trustee’s Position Does Not Reflect Either the Evidence or the**
7 **Subjective Realities of This Case**

8 With all due respect to the Trustee and her counsel, and recognizing their
9 concern for their fiduciary obligations and prompt, efficient, cost effective
10 administration of the estate, it would seem from the record that there was an
11 unnecessary rush to sell the Debtor’s residence in spite of virtually simultaneous
12 efforts on the part of the Debtor to pay her prepetition unsecured creditors. In that
13 rush, I believe the Trustee may have overlooked important personal implications facing
14 the Debtor and her co-tenant, the Debtor’s minor daughter, and their efforts to save
15 their home, namely, (1) a seriously ill widow and a fatherless minor; (2) serious (and
16 ultimately satisfactory) efforts by the widow to pay her bills and protect her and her
17 daughter’s interests in the family residence; and (3) all the other financial details
18 outlined in the Debtor’s June 2005 bankruptcy and motion papers, all of which strongly
19 support the Debtor’s motion to dismiss her bankruptcy case without further
20 unnecessary costs. The evidence leads me to the conclusion that consideration for
21 the Debtor’s circumstances and efforts should have taken precedence over the
22 Trustee’s efforts to sell the residence. I believe “reasonable billing judgment” should
23 have been exercised in favor of the Debtor’s program rather than the program pursued
24 by the Trustee and her counsel, in my humble opinion, though I appreciate that the
25 Trustee was trying to do her job.

26 Having said that, it is necessary to recognize that we have nothing to go on but

1 estimates of value, \$200,000 by the Debtor (for the value of her one-half interest) and
2 \$530,000 gross by the Trustee, for the total value of the residence. The Trustee's
3 estimate was based on her real estate broker's drive by appraisal supported only by a
4 property profile (that is not part of the evidence) and the broker's statement (also
5 undocumented) that he considered comparable sales, which I infer means sales of
6 real property that he concluded were more or less comparable to the Debtor's
7 residence.

8 The Trustee spoke to her broker and received his \$530,000 valuation before
9 employing counsel.² Based on that valuation, the Trustee computed equity as follows:

10	Fair Market Value	\$530,000
11	Less Lien	< \$94,000 >
12	Less Costs of Sale (8%)	< \$42,400 >
13	Divided by Debtor's 50% Interest	÷ <u>2</u>
14	Estate's Interest in Property	\$196,000 [sic]
15	Less Debtor's Exemption	< \$150,000 >
16	Net to Estate	\$46,800

17 At the line "Net to Estate" there appears to be significant equity for the Trustee to
18 administer. This is what the Trustee seems to hang her hat on, ignoring that fact that
19 here, only the Trustee and her professionals would benefit from any surplus from a
20 sale. Moreover, and even more importantly, the Trustee's calculations are incomplete.
21 Those calculations neglect the discretion vested in me pursuant to CCP §§ 872.140
22 and 873.820(b) and (d) to distribute any surplus from the sale after payment of
23 encumbrances, sales commissions, and other closing costs between the bankruptcy
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25 ² The Trustee spoke to a real estate broker, Ron Bombiger, by phone on June 14, 2005, and June 17,
26 2005, about the value of the Debtor's residence. Trustee's Opposition to Debtor's Motion to Dismiss Chapter
7 Case for Cause Under 11 U.S.C. § 707(a) and Request For Hearing, Exhibit B, Page 13.

1 estate and the Debtor's daughter's trust "in proportion to their shares as determined by
2 the court." CCP § 873.820(d). It does not comport with the evidence, common sense,
3 fairness, or equity (1) to have a trust for the benefit of a minor incur the cost of an
4 encumbrance for which the Debtor is solely liable personally (2) simply to provide
5 funds for payment of the Trustee's administrative costs in connection with what to my
6 analysis would have been an unnecessary forced sale. Based on CCP §§ 873.250(a)
7 and 873.820(b) and (d), this prejudice to the Debtor's daughter's interest, in my
8 evaluation of the evidence, would have to be corrected by a payment from the estate
9 of \$47,000 to reimburse the daughter's trust for the forced payment of a mortgage
10 balance that otherwise was the sole personal responsibility of the Debtor. This
11 adjustment would leave the bankruptcy estate with a deficit and precludes
12 administration of the estate.

13 I conclude that on balance my order dismissing the Debtor's bankruptcy case
14 without payment of the fees of the Trustee and her counsel is supported by a
15 preponderance of the evidence. In addition, any recovery by the Trustee after a sale
16 would have benefitted only the Trustee and her professionals and would be contrary to
17 the provisions of § 330(a)(4) and to the principles enunciated in Mednet.

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26 **CONCLUSION**

1 A review of the facts of the case, applicable statutes, and case law leads me to
2 the conclusion that on the record in this matter, from the outset, there was no reason
3 for the Trustee to sell the Debtor's residence. There was no equity for the estate in the
4 Debtor's family residence for creditors of the Debtor's bankruptcy estate and therefore
5 there was no estate to administer. The denial of fees and costs was not in error. The
6 Trustee's motion for reconsideration is denied.

7 SO ORDERED.

8 DATED: February 7, 2006
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11 /S/
12 THOMAS B. DONOVAN
13 United States Bankruptcy Judge
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NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING

TO ALL PARTIES IN INTEREST LISTED BELOW:

1. You are hereby notified that a judgment or order entitled:

MEMORANDUM OF DECISION

was entered on 2/8/06.

2. I hereby certify that I mailed a true copy of the order or judgment to the persons
and entities listed below on 2/8/06.

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Dated: 2/8/06


Clerk